IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

FRIDAY, THE 2ND NOVEMBER 2007 / 11TH KARTHIKA 1929

WA.No. 2609 of 2007

AGAINST THE JUDGEMENTN IN WP(C) NO.20459/2007, DATED 19/9/2007

APPELLANT: PETITIONER:

SAJEESH K.T.,
S/O. K.A. THILAKAN, AGED 31 YEARS,
KARUVATHIL HOUSE, CHAKKARAPADAM P.O.,
PERINJANAM, THRISSUR.

BY ADV. SRI.C.A.CHACKO
SMT.C.M.CHARISMA
SRI.N.A.SHAFEEK

RESPONDENTS: RESPONDENTS:
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1. THE TAHSILDAR (REVENUE RECOVERY),
KODUNGALLUR, THRISSUR.

2. PREMKUMAR,
S/O. KRISHNAKUMAR, KARUVATHIL,
PERINJANAM, KODUNGALLUR.

3. RAJKUMAR,
S/O. KRISHNAKUMAR, KARUVATHIL,
PERINJANAM, KODUNGALLUR.

BY SENIOR GOVERNMENT PLEADER SMT.K.MEERA
SRI.K.P.SARVOTHAMAN

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 02/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L.DATTU, C.J. & K.T.SANKARAN,J.

W.A. NO. 2609 OF 2007

Dated this the 2nd November, 2007

JUDGMENT

SANKARAN, J.

Sri.Premkumar, the second respondent herein, was a defaulter in repayment of the loan amount to the Irinjalakkuda Town Service Co-operative Bank Ltd.. For realisation of the loan amount, the property belonging to the defaulter, namely, his fractional share in 74 cents in Sy.No.350/11 and 13 cents in Sy.No.350/12 of Perinjanam Village was sold in auction. Rajkumar, the third respondent herein, who is none other than the brother of the defaulter, purchased the property in auction.

2. Thereafter, for realisation of the sales tax arrears due from Premkumar, the very same property was proceeded against under the Revenue Recovery Act. The property was proclaimed for sale and in public auction, the appellant purchased the property for a sum of Rs.6,06,000/-. The sale was not confirmed. Challenging the sale, Rajkumar, the owner of the property filed O.P.No.30403 of 2001. The appellant herein filed W.P.(C) No.20459 of 2007 for a writ of mandamus to confirm the sale in his favour. Another Writ Petition, namely, W.P.(C) No.890 of 2007, was filed by a stranger, wherein he offered a sum of Rs.7 lakhs for the property.

3. All the three Writ Petitions were disposed of by the learned single Judge by a common judgment, dated 19th September, 2007.

Learned single Judge held as follows:

> "Since the petitioner in O.P.30403/2001 has offered to settle the arrears of sales tax due in respect of the property and since the property is the family property of the defaulter and the person who purchased is none other than the brother of the defaulter and since sale is not confirmed, I feel recovery proceedings later initiated for recovery of arrears of sales tax due from the defaulter which led to the sale can be interfered with on condition of petitioner in O.P.30403/2001 clearing the arrears of tax and on compensating the petitioner in W.P.(C) No.20459/2007 with reasonable rate of interest. In the circumstances, all the writ petitions are disposed of with the following directions. There will be direction to the petitioner in O.P.No.30403/2001 to remit Rs.3,64,797/- which is the arrears of tax, penalty and interest due from the defaulter as on 14.9.2007, within six weeks from today. This will be adjusted against tax arrears and the Tahsildar will close the revenue recovery proceedings against the defaulter pertaining to arrears of sales tax. Along with this, petitioner in O.P.30403/2001 will pay interest at one and a half per cent per month on the purchase price paid by the petitioner in W.P.(C) No.20459/2007 from date of deposit of purchase price till date of payment of interest by the said petitioner. The Tahsildar will work out interest from date of remittance by the purchaser for the petitioner in O.P.No.30403/2001 to deposit interest amount. If payments are made within six weeks from now as above by the petitioner in O.P.30403/2001, the Tahsildar will refund the purchase price together with interest deposited by the said petitioner to the petitioner in W.P.(C) No.20459/2007 without making any recoveries or adjustments. Since sale is set aside and liability is settled as above, there will be direction to the Tahsildar not to recover any collection charges in the matter."

4. The sale in favour of the appellant was not confirmed. The learned single Judge directed the brother of the defaulter to remit Rs.3,64,797/-, the entire amount of sales tax arrears due from the defaulter with interest. There is also a direction to compensate the appellant herein by paying interest at the rate of 18% per annum. The appellant would get not only the amount paid by him but also interest at 18% per annum. The appellant has no vested right in the

property and unless and until auction is confirmed in his favour, he cannot claim any title to the property. Taking into account the facts and circumstances of the case and also the nature and value of the property, the learned single Judge thought it fit that the earlier auction purchaser, who is none other than the brother of the defaulter, should be allowed to retain the property on payment of sales tax arrears due from the defaulter, which is a charge on the property. At any point of time, the first auction purchaser, namely, the third respondent herein, could have discharged his liability of sales tax arrears and freed the property from that charge. By the time he could get the charge released, the property was sold in auction. Only because of that, his right to retain the property which he got under the earlier auction cannot be defeated. It cannot be said that the learned single Judge committed any error in granting the relief in favour of the third respondent and in declining the relief to the appellant herein. We do not find any ground to interfere with the well considered judgment of the learned single Judge.

The Writ Appeal fails and it is dismissed.

(H.L.DATTU)
Chief Justice

(K.T.SANKARAN)
Judge

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